

Attorney Docket No.: 5577-337/RSW920010175US1
Application Serial No.: 10/042,794
Filed: January 9, 2002
Page 8

REMARKS

Applicants appreciate the Final Office Action of June 2, 2005. Applicants note that the Final Office Action is almost identical to the Office Action of December 17, 2004. Thus, Applicants maintain the arguments made Applicants' response of March 17, 2005. However, in the interest of brevity, Applicants will not repeat the arguments made therein. The arguments made in Applicants' previous response of March 17, 2005 are incorporated herein by reference as if set forth in their entirety. Furthermore, Applicants have amended the independent claims to further highlight the details of the present invention. Applicants submit that the amended claims and the claims that depend therefrom are in condition for allowance for at least the additional reasons discussed herein. Claims 29-31 have been cancelled from the present application and the recitations of these claims have been incorporated into the independent claims.

The Independent Claims are Patentable over the Cited References

Claims 1-3, 7-11, 14-16 and 18-20 stand rejected under 35 U.S.C. § 102(e) as being clearly anticipated by United States Patent No. 6,728,877 to Mackin *et al.* (hereinafter "Mackin"). See Final Office Action, page 7. Applicants respectfully submit that many of the recitations of the amended independent claims are neither disclosed nor suggested by Mackin. For example, Claim 1 recites:

A method of migrating configuration data from a first executable product to a second executable product, the method comprising:
accessing data from external tables, commands, messages and/or configuration files upon startup of the first executable product to configure the first executable product for operation;
manipulating and storing the accessed data in internal tables for use by the first executable product;
instructing, from an external agent, the first executable product to provide a file containing selected configuration data;
accessing the selected configuration data from the internal tables and/or directly from the external tables, commands, messages and/or configuration files;
and
producing, by the first executable product, the file containing the selected configuration data in a format acceptable to the second executable product, wherein the first executable product comprises OROUTED and the second executable product comprises OMPROUTE.

Attorney Docket No.: 5577-337/RSW920010175US1

Application Serial No.: 10/042,794

Filed: January 9, 2002

Page 9

Claims 10, 18 and 19 contain similar recitations to the highlighted recitations. The accessing data, manipulating and accessing the selected configuration data steps are supported, for example, by the specification at pages 20 through 21. Furthermore, Claim 1 has been amended to include the recitations of dependent Claim 29.

With respect to dependent Claim 29, the Final Office Action admits that Mackin does not expressly disclose "the first executable product comprises OROUTED and the second executable product comprises OMPROUTE." See Final Office Action, page 16. However, the Final Office Action points to United States Patent No. 6,430,622 B1 to Aiken Jr., *et al.* (hereinafter "Aiken") as providing the missing teachings. Applicants respectfully disagree. The cited portion of Aiken states:

The communication protocol stack also notifies the routing daemon through either a BSDROUTINGPARMS entry for ORouted routing daemons or by sending notification to the routing daemon listening socket for OMPROUTE routing daemons.

See Aiken, column 17, lines 22-26. In other words, the Final Office Action uses Aiken to illustrate the existence of the OROUTED daemons and the OMPROUTE daemons. Applicants do not dispute that the existence of these daemons are known. However, Claim 1 recites "wherein the first executable product comprises OROUTED and the second executable product comprises OMPROUTE." Nothing in the cited references discloses or suggests first and second executable products being OROUTED and OMPROUTE, respectively, as recited in the claims of the present invention.

Furthermore, Applicants respectfully submit that there is no motivation to combine the cited references as suggested in the Final Office Action. As affirmed by the Court of Appeals for the Federal Circuit in *In re Sang-su Lee*, a factual question of motivation is material to patentability, **and cannot be resolved on subjective belief and unknown authority.** See *In re Sang-su Lee*, 277 F.3d 1338 (Fed. Cir. 2002). It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983).

The Final Office Action states:

Mackin and Aiken are analogous art because they are both concerned with the same field

Attorney Docket No.: 5577-337/RSW920010175US1

Application Serial No.: 10/042,794

Filed: January 9, 2002

Page 10

of endeavor, namely migrating data from one computer to another on a network. Therefore it would have been obvious to someone of ordinary skill in the art, at the time the invention was made, to implement a batch file to perform Aiken's method with Mackin's method of data migration. The motivation to do so was taught by Mackin's disclosure of the transition application programmers interface or (API), (Column 6, lines 38-51). Aiken further teaches TCP and setting up a connection between two endpoints (Column 1, lines 21-23). Thus, it would have been obvious, to a person of ordinary skill in the art, to implement routing daemons with Mackin's method of data migration.

See Final Office Action, page 16. This motivation is a motivation based on "subjective belief and unknown authority", the type of motivation that was rejected by the Federal Circuit in *In re Sang-su Lee*. In other words, the Final Office Action does not point to any specific portion of the cited references that would induce one of skill in the art to combine the cited references as set forth in the Final Office Action. Accordingly, the statement in the Final Office Action with respect to motivation does not adequately address the issue of motivation to combine as discussed in *In re Sang-su Lee*. Thus, it appears that the Final Office Action gains its alleged impetus or suggestion to combine the cited references by hindsight reasoning informed by Applicants' disclosure, which, as noted above, is an inappropriate basis for combining references.

Furthermore, Mackin discusses transitioning of configuration settings among computer systems. *See* Mackin, title and abstract. Aiken, on the other hand, discusses automated movement of IP addresses within a cluster. *See* Aiken, title and abstract. Nothing in the cited references or the art itself would motivate a person of skill in the art to combine Mackin and Aiken. Furthermore, as discussed above, the cited portion of Aiken merely discusses the existence of the daemons, therefore, even if combined, the cited combination does not disclose or suggest the recitations of the claims. Accordingly, Applicants submit that independent Claims 1, 10, 18 and 19 are patentable over the cited combination for at least the additional reasons discussed herein. Furthermore, Applicants submit that the dependent claims are patentable at least per the patentability of the independent base claims from which they depend.

Accordingly, Applicants submit that the claims of the present invention are patentable over the cited references for at least the reasons discussed herein and in Applicants' response of March 17, 2005.

Attorney Docket No.: 5577-337/RSW920010175US1
Application Serial No.: 10/042,794
Filed: January 9, 2002
Page 11

CONCLUSION

Applicants respectfully submit that pending claims are in condition for allowance for at least the reasons discussed above. Thus, allowance of the pending claims is respectfully requested in due course. Favorable examination and allowance of the present application is respectfully requested.

Respectfully submitted,



Elizabeth A. Stanek
Registration No. 48,568

USPTO Customer No. 46589
Myers Bigel Sibley & Sajovec
Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: 919/854-1400
Facsimile: 919/854-1401